

Case SU-7273
Appln. No. 10/603,132

REMARKS

The novelty of Claims 3-4, 5(3,4), 8-9, 10(8,9), 17, 21, 22(17), 29, 33, 38, 42, 43(38,42), 46, 47(46), and 50-51 is noted with sincere appreciation. Reconsideration and favorable action are respectfully requested in light of the above amendments and the following remarks.

Claims 1-17, 19-25, 29-31, 33-34, 38-40, and 42-58 are in the case. Claims 18, 26-28, 32, 35-37, and 41 have been cancelled without prejudice or disclaimer. Claim 1 now incorporates the features of original Claim 3. Claim 6 now incorporates some of the features of Claim 8. Claim 11 now incorporates the features of original Claims 15 and 16. Claim 23 now incorporates the features of cancelled Claims 26 and 27. Claim 48 now incorporates the features of original Claims 49 and 50. The dependencies of Claims 4, 17, 21, 29, 33-34, 38, 42-43, 46, and 51 have been amended as a result of cancellations of claims upon which they depended. Support for the amendments to Claims 3, 14-16, 20, 30, 39, 45, 49, and 50, as well as for new Claims 53-58 is shown in the Table below.

Claim number	Support
3, 20, 49	Page 7, paragraph 0022
14	Page 7, paragraph 0019
16	Page 7, paragraph 0019; Page 7, paragraph 0022; and Page 8, paragraph 0024
15, 50	Page 8, paragraph 0024
30, 39, 45	Page 7, paragraph 0019; Page 7, paragraph 0022; Page 8, paragraph 0024; and Page 9, paragraph 0025
53	Page 7, paragraph 0019 and Page 7, paragraph 0022
54	Page 4, paragraph 0013 and Page 7, paragraph 0022
55	Page 4, paragraph 0013
56	Page 4, paragraph 0014, lines 7-11
57	Page 4, paragraph 0014, lines 11-15
58	Page 12, paragraph 0031

Case SU-7273
Appln. No. 10/603,132

A fee for new independent Claim 54 is included. No other fees are believed to be due because the number of claims cancelled is greater than the number of claims added to the case.

Objection to the Specification

It is believed that the objection to the informalities in the Specification are cured by the above amendment, which now specifies the patent number or application number, where appropriate, of the application referred to therein.

Objections to certain Claims

Amendments have been made to Claims 2, 6, 7, 11, 17, and 23. The amendments are believed to overcome the Examiner's objections to these claims. The objection to Claim 49 is moot in light of the cancellation of Claim 49. The amendments to the claims were clerical in nature, and thus these amendments do not change the scope of the claims.

One of the suggested amendments was not made. Regarding the objection to the word "is" in line 7 of original Claim 7, the singular of the verb is correct, as it is connected to a singular subject, "a series." The prepositional phrase "of poultry carcasses opened and eviscerated in b)" modifies the noun "series."

Rejection under 35 U.S.C. 112

Claims 45 and 46 are rejected under section 112, second paragraph, as indefinite for failing to particularly point out and distinctly claim the invention. This rejection is respectfully traversed.

The rejection of Claim 45 is no longer applicable because Claim 45 has been cancelled. Claim 46 now depends on amended Claim 23. Claim 23 as amended recites a spray delivery system, and provides antecedent basis for the phrase "spray delivery system" in Claim 46.

Thus, it is submitted that for the foregoing reasons, Claim 46 does particularly point out and distinctly claim subject matter the Applicants regard as the invention, and it is respectfully requested that this rejection be reconsidered and withdrawn.

Rejection under 35 U.S.C. 102(e)

Claims 1-2, 5(1,2), 6-7, 10(6,7), 11-16, 18-20, 22(11,15,19,20), 23-28, 30-32, 34-37, 39-41, 43(36), 44-45, 47(44,45), 48-49, and 52(48,49) are rejected under section 102(e) as

Case SU-7273
Appl. No. 10/603,132

anticipated by Howarth (U.S. 6,908,636) or Howarth (U.S. 6,986,910). This rejection is respectfully traversed. In the following discussion, the references to Howarth are to U.S. 6,908,636.

The rejected claims as amended are submitted to be novel over both Howarth references. While Howarth does state in column 35 under Table 38 that DBDMH (1,3-dibromo-5,5-dimethylhydantoin) solution "was sprayed on the birds, inside and out," this is not enough to anticipate the present claims. Nowhere in Howarth is there disclosure that inside-outside washing involves penetration of the carcass by a spray probe. Because all of the present claims include inside-outside washing with penetration of the carcass by a spray probe, all of the present claims are novel over both Howarth references.

Therefore, present Claims 1-2, 5(1,2), 6-7, 10(6,7), 11-13, 19, 22(11,15,19), 23-25, 31, 34, 40, 44, 47(44), 48, and 52(48) are not anticipated by the cited references. It is respectfully requested that this rejection be reconsidered and withdrawn.

Rejection under 35 U.S.C. 103(a) over Howarth

Claims 17, 21, 22(17), 29, 33, 38, 42, 43(38,42), 46, and 47(46) are rejected under section 103(a) as obvious over Howarth (U.S. 6,908,636) or Howarth (U.S. 6,986,910). This rejection is respectfully traversed. In the following discussion, the references to Howarth are to U.S. 6,986,910.

For an obviousness rejection, the Examiner is required to point to something in the reference that provides a motivation or suggestion to modify the reference. The Federal Circuit has stated in *In re Fritch* that

"The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification." 972 F.2d 1260, 1266, 23 U.S.P.Q.2d 1780, 1783-84 (Fed. Cir. 1992) (quoting *In re Gordon*, 733 F.2d 900, 902, 221 U.S.P.Q. 1125 (Fed. Cir. 1984)).

No portion of the Howarth references has been cited in the section of the Office Action detailing this rejection. The portions of the Howarth references cited in the novelty rejections (U.S. 6,908,636, cols. 2-4, 7 and 13-15 and the claims, or U.S. 6,986,910, cols. 2-5 and 10-12 and the claims) do not include any suggestion or motivation to modify the procedures disclosed therein in a manner consistent with the present claims. Thus, a *prima facie* case of obviousness has not been established.

Case SU-7273
Appln. No. 10/603,132

The statement on Page 3 of the Office Action that "the optimum concentration of the microbiocidal solution used for the outside and inside treatment of the poultry carcasses would require nothing more than routine experimentation by one reasonably skilled in this art" ignores the requirement that all of its limitations of the claims must be considered. M.P.E.P. § 2143.03. As the rejected claims are dependent claims, they incorporate the limitations of the claims from which they depend. No reasoning has been provided as to why the claimed invention would have been obvious to one of ordinary skill in the art in light of Howarth.

All of the claims included in this rejection involve similar subject matter, specifically that the water applied to the interior cavity has been treated with a *higher concentration* of the 1,3-dibromo-5,5-dialkylhydantoin than that with which the water applied to the exterior of the carcass has been treated. The portion of Howarth that does teach washing of the birds inside and out (column 35, lines 51-58) uses the *same concentration* of 1,3-dibromo-5,5-dimethylhydantoin for all of the washing. There is no teaching or suggestion in either Howarth patent that a different concentration of biocide can be used for washing the interior cavity than for the exterior of the carcass, much less that inside-outside washing where the interior cavity of a carcass is penetrated by a spray probe can be performed in conjunction with use of a different concentration of biocide for washing the interior cavity than for the exterior of the carcass. Furthermore, the rejection is no longer believed to apply to the claims as amended.

In summary, the § 103 rejection of Claims 17, 21, 22(17), 29, 33, 38, 42, 43(38,42), 46, and 47(46) over Howarth should be reconsidered and withdrawn.

Rejection under 35 U.S.C. 103(a) over Howarth in view of Hilgren et al.

Claims 3-4, 5(3,4), 8-9, 10(8,9), 50-51, and 52(50,51) are rejected under section 103(a) as obvious over Howarth (U.S. 6,908,636) or Howarth (U.S. 6,986,910) in view of Hilgren et al. (U.S. 6,514,556). This rejection is respectfully traversed. In the following discussion, the references to Howarth are to U.S. 6,908,636.

As in the above §103 rejection, the Examiner has not pointed to anything in the cited references that provides a motivation or suggestion to combine these references. The portions of the Howarth references cited in the novelty rejections (U.S. 6,908,636, cols. 2-4, 7 and 13-15 and the claims, or U.S. 6,986,910, cols. 2-5 and 10-12 and the claims) do not include any suggestion or motivation to modify the procedures disclosed therein in a manner consistent with the features of the present claims. Nothing in the cited portion of Hilgren et al. (column 17)

Case SU-7273
Appln. No. 10/603,132

provides a motivation or suggestion to combine these references in a manner consistent with the features of the present claims. Thus, a *prima facie* case of obviousness has not been established.

Moreover, Hilgren et al. teaches away from the use of chlorinated biocides (column 2, lines 20-27), stating that "the use rate of these antimicrobials is very high because they are not effective at low concentrations or they tend to be rapidly consumed by the high organic load included with the poultry." Hilgren et al. is silent regarding brominated biocides. In addition, Howarth does not teach that inside-outside washing involves penetration of the carcass by a spray probe, a feature required by the rejected claims. Therefore, it would not have been obvious to one of ordinary skill in the art to employ a brominated biocide in inside-outside washing, where the interior cavity of a carcass is penetrated by a spray probe in light of the combination of cited references.

Regarding rejected Claims 9 and 10(9), which involve the feature that the water applied to the interior cavity has been treated with a *higher concentration* of the 1,3-dibromo-5,5-dialkylhydantoin than that with which the water applied to the exterior of the carcass has been treated, the remarks in the above rejection apply equally here. The addition of Hilgren to Howarth does nothing to make this subject matter obvious.

In summary, the § 103 rejection of present Claims 4, 5(4), 8-9, 10(8,9), 51, and 52(51) over the combination of either Howarth patent and Hilgren et al. should be reconsidered and withdrawn.

In light of the foregoing remarks, the case is believed to be in condition for allowance. Prompt notification to this effect would be sincerely appreciated.

Case SU-7273
Appln. No. 10/603,132

If, however, any matters remain in requiring further consideration, the Examiner is respectfully requested to telephone the undersigned so that such matters can be discussed, and if possible, promptly resolved.

Respectfully submitted,



Mary H. Drabnis
Reg. No. 45,909
Sieberth & Patty, LLC
4703 Bluebonnet Boulevard
Baton Rouge, LA 70809
Telephone: 225-291-4600
Facsimile: 225-291-4606